

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JAMES E. WOLF,

Plaintiff,

v.

Case No. 04-CV-74252-DT

DANIEL L. SUTTON, et al.,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION TO STAY THE PROCEEDINGS
AND DISMISS THE OPINION AND ORDER OF DISMISSAL
AND DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION**

The court has before it Plaintiff James E. Wolf's "Motion for the Court to Grant Plaintiff's Motion to Stay the Proceedings and Dismiss the Opinion and Order for Dismissal of Plaintiff's Civil Rights Complaint" and his "Motion for Re-Consideration of Plaintiff's Habeas Corpus-Civil Complaint." The court dismissed without prejudice Plaintiff's civil rights complaint filed pursuant to 42 U.S.C. § 1983 because Plaintiff was challenging the propriety of his state court prosecution and conviction. *See Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994).

In his motions, Plaintiff essentially seeks reconsideration of this court's dismissal of his complaint. However, a motion for reconsideration which presents issues already ruled upon by the court, either expressly or by reasonable implication, will not be granted. *See Hence v. Smith*, 49 F. Supp. 2d 547, 550 (E.D. Mich. 1999); *Czajkowski v. Tindall & Assoc., P.C.*, 967 F. Supp. 951, 952 (E.D. Mich. 1997). Plaintiff has not met

his burden of showing a palpable defect by which the Court has been misled or his burden of showing that a different disposition must result from a correction thereof, as required by Local Rule 7.1(g)(3).

To the extent that Plaintiff seeks federal habeas relief with respect to his state court conviction, he may not do so in a civil rights action under 42 U.S.C. § 1983. The appropriate remedy is to file a petition for writ of habeas corpus under 28 U.S.C. § 2254. Moreover, the court may not permit Plaintiff to amend his complaint to defeat dismissal under 28 U.S.C. § 1915(e)(2) or § 1915A. See *Baxter v. Rose*, 305 F.3d 486, 488-89 (6th Cir. 2002) (citing *McGore v. Wigglesworth*, 114 F.3d 601, 612 (6th Cir. 1997)); see also *Moniz v. Hines*, 2004 WL 259214, at *4 (6th Cir. Feb. 10, 2004) (unpublished).

Accordingly, the court DENIES Plaintiff's motions [Dkt. # 9 and #11].

IT IS SO ORDERED.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: July 21, 2005

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, July 21, 2005, by electronic and/or ordinary mail.

S/Lisa G. Teets
Case Manager and Deputy Clerk
(313) 234-5522